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VIA UPS OVERNIGHT

Ms Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D C 20423
(202) 245-0245

Re. Finance Docket No 35715 (Sub-No. 1) Norfolk Southern Railway Company –
Temporary Trackage Rights Exemption – Grand Trunk Western Railroad Company and
Wisconsin Central Ltd.

Dear Ms Brown:

Enclosed for filing in the above proceeding please find the original and ten copies of a Petition for Partial Revocation of Class Exemption and for Temporary Exemption of Trackage Rights. Also enclosed is a credit card form authorizing payment in the amount of \$250.00 for the filing fee required by 49 C F R. § 1002.2(f), Part V (61)

Thank you for your prompt assistance. If you have any questions, please feel free to contact me.

Sincerely,

Christine I. Friedman

Christine I. Friedman

Enclosures
CC: Thomas J Healey, Esq.

233736

Christine I. Friedman
Assistant General Attorney

ENTERED
Office of Proceedings

JAN 28 2013
Part of
Public Record

FILED

JAN 28 2012

January 25, 2013
SURFACE
TRANSPORTATION BOARD

FEE RECEIVED

JAN 28 2013

SURFACE
TRANSPORTATION BOARD

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35715 (Sub-No. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY –
TEMPORARY TRACKAGE RIGHTS EXEMPTION –
GRAND TRUNK WESTERN RAILROAD COMPANY AND
WISCONSIN CENTRAL LTD.**

FEE RECEIVED

JAN 23 2013

**SURFACE
TRANSPORTATION BOARD**

**PETITION FOR PARTIAL REVOCATION OF CLASS EXEMPTION
AND FOR TEMPORARY EXEMPTION OF TRACKAGE RIGHTS**

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*Counsel for Norfolk Southern Railway
Company*

Dated: January 25, 2013

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Finance Docket No. 35715 (Sub-No. 1)

**NORFOLK SOUTHERN RAILWAY COMPANY –
TEMPORARY TRACKAGE RIGHTS EXEMPTION –
GRAND TRUNK WESTERN RAILROAD COMPANY AND
WISCONSIN CENTRAL LTD.**

**PETITION FOR PARTIAL REVOCATION OF CLASS EXEMPTION
AND FOR TEMPORARY EXEMPTION OF TRACKAGE RIGHTS**

Pursuant to 49 U.S.C. § 10502(d) and 49 C.F.R. § 1121, Norfolk Southern Railway Company ("NS") hereby seeks partial revocation of the Board's trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), in Finance Docket No. 35715, as necessary to permit the trackage rights arrangement that is the subject of this proceeding to expire as expressly agreed by the parties. By agreement between Grand Trunk Western Railroad Company and Wisconsin Central Ltd. (collectively referred to as "CN") and NS, NS will have temporary overhead trackage rights over two rail lines owned by CN during the construction of a connecting track between CN's City Track and NS's Gary Branch at or near Gary, IN (the "Gary City Track Connection"). The trackage rights will expire twenty-four months after the commencement date of the agreement, or the date that the Gary City Track Connection is completed and in use, whichever comes first.¹ Revoking the class exemption, in part, to limit the term of the trackage rights is consistent with

¹ Because the temporary trackage rights covered by the Verified Notice of Exemption are longer than a year in duration, the filing is not being made under the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8)

the Rail Transportation Policy of 49 U.S.C. §10101 and will promote efficient and competitive rail service.

DISCUSSION

Concurrently with this Petition, NS is filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(7) for temporary overhead trackage rights over the CN rail lines located: (1) between CN's connection with NS at or near Milepost 99.5 in South Bend, IN and at or near Milepost 36.1 in Griffith, IN on CN's South Bend Subdivision, a distance of approximately 63.4 miles; and (2) between Milepost 36.1 in Griffith, IN and CN's Kirk Yard at or near Milepost 45.4 in Gary, IN on CN's Matteson Subdivision, a distance of approximately 9.3 miles. The trackage rights will expire twenty-four months after the commencement date of the agreement, or the date that the Gary City Track Connection is completed and in use, whichever comes first.²

While NS and CN expressly agree that these trackage rights are only temporary, trackage rights authorized under the Section 1180.2(d)(7) class exemption typically remain effective indefinitely, regardless of the duration provided for in the agreement. *See, e.g., BNSF Railway Company – Temporary Trackage Rights Exemption – Union Pacific Railroad Company*, FD 35676 (Sub-No. 1) (STB served Nov. 30, 2012). Accordingly, NS is filing this Petition to permit the trackage rights to expire as provided in the underlying Temporary Trackage Rights Agreement. The Board has routinely granted partial petitions to revoke in order to permit temporary trackage rights sought under Section 1180.2(d)(7) to expire as agreed by the parties.

² The "Commencement Date" is defined in the agreement as the date on which NS commences operations over the CN lines. The parties intend for NS to commence such operations shortly after the effective date of the class exemption in Finance Docket No. 35715.

See, e.g., id: Union Pacific Railroad Company – Temporary Trackage Rights Exemption – BNSF Railway Company, FD 34554 (Sub-No.17) (STB served Nov. 14, 2012).

Under 49 U.S.C. § 10502, the Board may exempt a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power. Under Section 10502(d), the Board may revoke an exemption, in whole or in part, to the extent it specifies, when it finds such revocation is necessary to carry out the transportation policy of 49 U.S.C. § 10101.

Granting partial revocation of the class exemption in Finance Docket No. 35715 will promote the rail transportation policy by eliminating the need to file a second pleading seeking discontinuance of the trackage rights when the agreement expires, thereby promoting rail transportation policy goals at 49 U.S.C. § 10101(2), (4), (5) and (15). In addition, limiting the term of the trackage rights is consistent with the limited scope of the class exemption under 49 C.F.R. § 1180.2(d)(7) and will have no adverse impact on shippers. The temporary nature of the trackage rights is a key component of the agreement between NS and CN, and the trackage rights would not have been granted without this feature.

The applicable labor protective conditions for the discontinuance of the temporary trackage rights pursuant to this petition are those imposed in *Oregon Short Line Railroad – Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line)*, 360 I.C.C. 91 (1979).

Accordingly, NS respectfully requests that the Board partially revoke the trackage rights class exemption to the extent necessary to permit the trackage rights authorized in Finance

Docket No. 35715 to expire in accordance with the terms of the underlying trackage rights agreement.

Respectfully submitted,

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Dated: January 25, 2013